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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1855

EASTALCO ALUMINUM COMPANY,
Petitioner,

v.

PUBLIC SERVICE COMMISSION OF MARYLAND, ET AL.,
Respondents.

BRIEF OF PUBLIC SERVICE COMMISSION OF MARYLAND IN OPPOSITION TO PETITION OF WRIT OF CERTIORARI

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The Public Service Commission of Maryland ("Commission"), Respondent, by its undersigned Counsel, files this Brief in opposition to the Petition for Writ of Certiorari to the Court of Special Appeals of Maryland, filed on behalf of Eastalco Aluminum Company ("Eastalco").

STATEMENT OF FACTS

The Commission accepts the Statement of Facts recited in Eastalco's Petition.

GROUNDS FOR DISMISSAL OF THE WRIT

1. The Commission's action in modifying the contract between Eastalco and The Potomac Edison Company ("Potomac Edison") did not violate Article 1, Section 10 of the Constitution of the United States of America.

2. The *Sierra-Mobile* Doctrine is not applicable to this proceeding.

ARGUMENT

I.

THE COMMISSION'S AUTHORITY TO MODIFY A CONTRACT CONSISTENT WITH THE CONTRACT CLAUSE OF THE UNITED STATES CONSTITUTION HAS PREVIOUSLY BEEN DETERMINED BY THIS COURT.

Eastalco contends that the Contract Clause of the United States Constitution restricts the Commission's authority to regulate the rates charged by a public utility. A similar contention was rejected by this Court in *Midland Realty Company v. Kansas City Power & Light Company*, 300 U.S. 109 (1937) and the Court of Appeals of Maryland in *Yeatman v. Public Service Com.*, 126 Md. 513 (1915).

A review of these decisions and other related decisions of this Court clearly indicates that there is no issue of constitutional dimension in this case. None of the cases cited by Eastalco in its Petition do more than interpret specific statutory law. The actions of the Commission which are the subject of Eastalco's Petition, however, were valid exercises of the police power delegated to the Commission by the Legislature and were constitutional.

The Constitution of the United States permits the police power of the State to alter contract provisions where it is found to be in the public interest. In *Midland Realty Company, supra*, Midland and the utility had contracted for steam service at certain specified rates. The agreement was for a five-year period with an option to renew. The utility later sought rates higher than those specified in the contract from the Missouri Public Service Commission. The Missouri Commission allowed rates higher than those in the contract, and the utility filed a tariff in accord with

the Commission's order. Soon thereafter, the utility was permitted to increase its rates further. Midland continued to pay for service at the contract rate levels, and at the expiration of the contract it was sued by the utility for the difference between the contract rates and those allowed by the Missouri Commission. Midland claimed that the Commission had acted to impair its contract rights and confiscate its property without due process in derogation of Article 1, Section 10 of the Constitution and of the Fourteenth Amendment, Section 1. The Missouri courts upheld the utility's adjusted rates. On review, the Supreme Court held that the Missouri Public Service Commission had the power to adjust the rates called for in the contract under the Constitution. The Court said:

> [T]he State has power to annul and supersede rates previously established by contract between utilities and their customers. It has power to require service at nondiscriminatory rates, to prohibit service at rates too low to yield the cost rightly attributable to it, and to require utilities to publish their rates and to adhere to them. (*Id.* at 113).

The Supreme Court, as did the Maryland Court in *Yeatman, supra*, recognized that rate making is a legislative function and said:

> It [Midland] does not, and reasonably it could not, contend that immediate exertion by the legislature of the State's power to prescribe and enforce reasonable and nondiscriminatory rates depends upon or is conditioned by specific adjudication in respect of existing contract rates. (*Id.* at 114).

The case of *Union Dry Goods Company v. Georgia Public Service Corporation*, 248 U.S. 372 (1919), is cited with approval in *Midland Realty, supra*. In *Union Dry Goods Company, supra*, the utility had a five-year contract to supply service at a specified rate. A higher rate than the contract specified was authorized by the regulatory authority, the Railraod Commission of Georgia. The dry

goods company brought suit for specific performance of the contract and to enjoin the higher authorized rate from taking effect. The case was decided on the basis that there was no Constitutional impediment to the use of the police power to order different rates than those authorized in the contract where it was determined to be just and in the public interest. The Court concluded its decision with the following observation after citing numerous authorities along the same lines:

> These decisions, a few from many to like effect, should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state . . . (*Id.* at 377).

Similarly, the Courts in Maryland have properly interpreted these Supreme Court decisions and have found no violation of the Contract Clause of the United States Constitution when the Commission modifies a contract rate. In *Yeatman, supra*, the Court of Appeals held that modification of a rate contained in a contract between a public utility and a customer by the Commission does not impair the obligation of contract. The Court said the following with respect to the State's authority over contracts of this type:

> Contracts, even as between individuals, when entered into are necessarily subject to the control of the police power of the State, whenever such contract relates to matters which are or may be subject to the exercise of such powers . . . Some of the cases which have dealt with situations where there had been an establishment of rates directly by the Legislature, have distinctly denied the theory that such legislative establishment of rates constituted any contract whatever, and have held, accordingly, that the rates established were liable to change at any time by the legislative authority which had originally enacted them. The true principle, which must control in a case

like the present, is that laid down in *Manigault v. Spring*, 199 U.S. 473, in the following language:

> It is the settled law of this Court that interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.

The question presented by Eastalco is not one of first impression, nor is it worthy of consideration by this Court. The authority of the State to regulate rates for utility service, even rates established by contract, is well settled. The public interest will not be served by further consideration of this matter.

II.

THE SIERRA-MOBILE DOCTRINE IS WHOLLY IRRELEVANT TO THE DETERMINATION OF THIS CASE.

In pursuing this appeal, Eastalco places primary emphasis upon the decisions of the Supreme Court in *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1956). Eastalco contends that the Doctrine enunciated in these cases establishes standards which the Commission must apply before modifying a contractual rate agreement. The Commission agrees that there are limitations upon its power to modify a contract; however, these limitations are not found in either *Sierra* or *Mobile, supra*.

The *Sierra-Mobile* Doctrine does not impose constitutional limitations on the authority of the Commission to order modifications of contracts between a public service company and its customers. The *Sierra-Mobile* Doctrine is nothing more than this Court's interpretation of two Federal statutes. There is no constitutional dimension to either case, as noted by the Court in *Mobile* at 350 U.S. 337.

> The question presented is solely one of the proper interpretation of the Natural Gas Act, there being no claim that the statute, if interpreted to permit a natural gas company unilaterally to change its contracts, would be unconstitutional. *Cf. Midland Realty Co. v. Kansas City Power & L., Co.*, 300 U.S. 109, 81 L. Ed. 540, 57 S. Ct. 345.

Simply stated, *Sierra* and *Mobile, supra*, involve interpretations of the Natural Gas Act, 52 Stat. 821, 15 U.S.C. 717 *et seq.* and the Federal Power Act, 49 Stat. 847, 16 U.S.C. 824 *et seq.*, neither of which is relevant to the instant case since the Maryland Public Service Commission is in no way subject to these Federal statutes.

Similarly inapposite is Eastalco's reliance on the decisions of other states as a basis for adopting the *Sierra-Mobile* Doctrine in Maryland. Those decisions clearly involve interpretations of state law. The Maryland Courts previously held that the *Sierra-Mobile* Doctrine forms no part of Maryland law. A casual reading of *Sierra-Mobile, supra*, and its progeny reveals that the Doctrine applies to certain Federal administrative agencies by reason of Federal statutory law. In no way can the cases be read to impose an obligation on the states to adopt the Doctrine. The Maryland Courts' finding that the *Sierra-Mobile* Doctrine forms no part of Maryland law, then, ends the inquiry. The finding is this State's interpretation of Maryland law and, therefore, presents no Federal question. Insofar as the Eastalco Petition relates to the failure

of the Maryland Courts to adopt the *Sierra-Mobile* Doctrine, this Court lacks jurisdiction over the subject matter.

CONCLUSION

The Public Service Commission of Maryland respectfully submits that the issues which are raised by E stalco's Petition were properly decided by the Maryland Court of Special Appeals in accordance with previous decisions of this Court. Consequently, the Petition for Writ of Certiorari to the Court of Special Appeals of Maryland should be denied.

Respectfully submitted,

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